Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1095

COMMISSIONER OF INTERNAL REVENUE,
Petitioner

—*v.*—

ROBERT J. KOWALSKI & NANCY A. KOWALSKI

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED FEBRUARY 7, 1977
CERTIORARI GRANTED MARCH 28, 1977

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1095

COMMISSIONER OF INTERNAL REVENUE,
Petitioner

—*v.*—

ROBERT J. KOWALSKI & NANCY A. KOWALSKI

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX

	Page
Docket Entries in Tax Court	1
Petition	4
Answer	13
Amendment to Answer	15
Reply	18
Stipulation of Facts	20
Supplementary Stipulation of Facts	25
Exhibit 11	30
Decision	39
Order Allowing Certiorari	41

UNITED STATES TAX COURT

GENERAL DOCKET

Docket No. 112 73

ROBERT J. KOWALSKI AND NANCY A. KOWALSKI,
PETITIONER
33 Armstrong Drive
Clark, New Jersey 06066

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

APPEARANCES FOR PETITIONER: W/D 2/8/74

Carl B. Cordes, Herrick K. Lidstone, 280 Park Ave., NY, NY 10017 (E/A 1/21/74)
(Cordes Firm is: Battle, Fowler, Lidstone, Pierce and Kheel)

Richard Kilcullen (E/A 2/27/74) 280 Park Avenue, New York, New York 10017

Date	Filings and Proceedings
Jan. 2, 1973	PETITION FILED: FEE PAID Jan. 2, 1973. Served Jan. 5, 1973.
Mar. 6, 1973	REQUEST by Resp. for trial at Newark, New Jersey. GRANTED Mar. 12, 1973. Served Mar. 12, 1973.
Mar. 5, 1973	ANSWER filed by Resp. Served Mar. 12, 1973.
Nov. 23, 1973	NOTICE OF TRIAL on Feb. 25, 1974 at Newark, N.J. Served Nov. 23, 1973.
Jan. 21, 1974	Entry of Appearance by Carl B. Cordes for Petr. filed. Served Jan. 25, 1974.
Jan. 21, 1974	Entry of Appearance by Herrick K. Lidstone for Petr. filed. Served Jan. 25, 1974.

Date	Filings and Proceedings

Jan. 31, 1974 MOTION by Resp. for leave to file Amendment to Answer. (Amendment to Answer Lodged). GRANTED Feb. 20, 1974. Served Feb. 21, 1974.

Feb. 4, 1974 NOTICE of filing of resp. motion for leave to file amendment to answer. Petrs are directed to file on or before Feb. 18, 1974 either a notice of objection or notice of no objection. Served Feb. 4, 1974.

Feb. 6, 1974 MOTION by Earl G. Thompson for leave to withdraw as Counsel for Petitioner. GRANTED Feb. 8, 1974. Served Feb. 12, 1974.

Feb. 14, 1974 RESPONSE TO MOTION FOR LEAVE TO FILE AMENDMENT TO ANSWER filed by Petr. Served Feb. 21, 1974.

Feb. 20, 1974 AMENDMENT TO ANSWER FILED. Served Feb. 21, 1974.

Feb. 27, 1974 TRIAL at Newark, N.J. before Judge Sterrett. ENTRY OF APPEARANCE of Richard Kilcullen filed. Stipulation of facts with exhibits filed. Brief dates to be set when record is closed. See Order 10/14/75 (record remains open to receive additional evidence.)

Mar. 28, 1974 TRANSCRIPT of Feb. 27, 1974 rec'd.

April 8, 1974 REPLY by Petr. filed. Served Apr. 8, 1974.

May 22, 1974 ORDER, that the parties are granted an extension of time to July 1, 1974 to submit a Suppl. Stipulation and to report the necessity for additional trial time. May 23, 1974.

July 30, 1974 SUPPLEMENTARY STIPULATION OF FACTS FILED.

July 31, 1974 ORDER, that record in this case be closed and further that Parties file Briefs on or before October 30, 1974 and Reply Briefs on or before December 29, 1974. Served Aug. 1, 1974.

Date	Filings and Proceedings

Oct. 21, 1974 MOTION by Resp. to extend time to Nov. 22, 1974 and Jan. 24, 1975, within which to file Briefs and Reply Briefs, respectively. (No Obj. Petr.). GRANTED Oct. 22, 1974. Served Oct. 23, 1974.

Nov. 22, 1974 BRIEF FOR RESPONDENT filed. Served Nov. 26, 1974.

Nov. 25, 1974 BRIEF FOR Petr. filed. (P. M. timely). Served Nov. 26, 1974.

Jan. 24, 1975 REPLY BRIEF for Resp. filed. Served Jan. 28, 1975.

Jan. 27, 1975 REPLY BRIEF for Petr. filed. (P.M. timely). Served Jan. 28, 1975.

Oct. 14, 1975 ORDERED, that this case is reassigned to Judge Scott. Served Oct. 14, 1975.

Oct. 14, 1975 FINDINGS OF FACT & OPINION filed, Judge Scott. (Decision will be entered under Rule 155.) Served Oct. 14, 1975.

Jan. 2, 1976 AGREED COMPUTATION. Filed.

Jan. 6, 1976 DECISION ENTERED, Judge Scott. Served Jan. 6, 1976.

APPELLATE PROCEEDINGS

Feb. 2, 1976 NOTICE OF APPEAL, to U.S.C.A., Third Circuit, filed by Petrs. Served Feb. 2, 1976.

Feb. 2, 1976 NOTICE of Filing with copy of notice of appeal sent to Mr. Meade Whitaker, Chief Counsel. Served Feb. 2, 1976.

Feb. 2, 1976 NOTICE, to parties, of assembling and date for transmission of the record. Served Feb. 2, 1976.

THE UNITED STATES TAX COURT

Docket No.

ROBERT J. KOWALSKI AND NANCY A. KOWALSKI,
PETITIONERS

—*v*—

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

PETITION

The above named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Symbols AU:SB:90), dated October 5, 1972, and as a basis for their case allege as follows:

1. The petitioners, Robert J. Kowalski and Nancy A Kowalski, reside at 33 Armstrong Drive, Clark, New Jersey 06066. The return for the period here involved was filed with the District Director, Internal Revenue Service, Newark, New Jersey.

2. The notice of deficiency, a copy of which is attached hereto and marked "Exhibit A", was mailed to the petitioners on or about October 5, 1972.

3. The taxable year involved is 1970 for which year the Commissioner determined a deficiency in income tax of $69.54, all of which is in dispute.

4. The determination of tax set forth in said notice of deficiency is based upon the following error:

> Respondent erroneously included as gross income of Robert J. Kowalski, ("petitioner"), or, in the alternative, if such inclusion in gross income was proper, erroneously disallowed for the year 1970 either (a) an exclusion from gross income of $405.00 constituting a portion of the cost and value of meals furnished by and for the convenience of petitioner's employer, the New Jersey State Police or (b) a deduction of $405.00 of expenses constituting a portion

> of the ordinary and necessary business expenses of petitioner in connection with his employment while away from home.

5. The facts upon which petitioner relies as a basis for his case are as follows:

(a) Petitioner during the year in controversy was a trooper of the New Jersey State Police ("trooper"), a part of the Department of Law and Public Safety of the State of New Jersey.

(b) As a trooper, petitioner is subject to quasi-military discipline. He may not withdraw from the force at will. Regardless of the nearness of his home to his station, he is allowed to be home only at specifically authorized times. He is on call twenty-four hours a day, seven days a week.

(c) On information and belief the New Jersey State Police formerly supplied troopers with meals at their stations at no cost. To avoid total absence of patrol personnel during meal periods, food maintenance payments were later paid to allow troopers to remain where required by their duties outside their stations. To be on call during meals, petitioner must choose restaurants meeting specifications of the New Jersey State Police and provide the employer with the restaurant's telephone number in advance. Petitioner in the year in controversy received a maintenance allowance which included food maintenance.

(d) Petitioner at all times met his employer's requirements concerning the kind and location of restaurant used.

(e) Petitioner was required to travel and live away from his family home during his extended duty periods while not on leave and he was required to leave his regular assigned station on numerous occasions for riot control duty, for training and to investigate accidents. Petitioner was away from his regular assigned station seventy-five days during calendar year 1970.

(f) While travelling away from home, petitioner as a trooper on duty, incurred food expenses which were ordi-

nary and necessary expenses connected with his employment-related travel. The value and cost of such food was $405.00, during the last three months of 1970.

WHEREFORE, petitioner prays that this Court may hear the case and redetermine the deficiency due with respect to 1970 and that the petitioner may have such other and further relief as to the Court may seem just.

/s/ Earl G. Thompson
EARL G. THOMPSON
Counsel for Petitioner
Battle, Fowler, Stokes & Kheel
280 Park Avenue
New York, New York 10017

[Verification Omitted]

P.O. Box 2 Newark, N.J. 07101
DEPARTMENT OF THE TREASURY

DISTRICT DIRECTOR
INTERNAL REVENUE SERVICE

Date: Oct. 5, 1972

In reply refer to: Au:SB:90

[SEAL]

— Mr. Robert J. Kowalski and
Mrs. Nancy A. Kowalski
33 Armstrong Drive
Clark, New Jersey 07066

CERTIFIED MAIL

— Dear Mr. and Mrs. Kowalski:

T .x Year Ended	Deficiency
December 31, 1970	$69.54

This letter is to notify you—as required by law—that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed Short-Form Statutory Notice Statement. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the statement, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has

decided your case. The time in which you may file a petition with the Court (90 or 150 days, as the case may be) is fixed by law, and the Court cannot consider your case if your petition is filed late.

Under section 7463 of the Internal Revenue Code, the United States Tax Court has a simplified procedure for handling cases where the disputed portion of the deficiency does not exceed $1,000 for any one taxable year. You may obtain information on this special procedure, as well as a copy of the rules for filing a petition with the Tax Court, by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

Sincerely yours,
Johnnie M. Walters
Commissioner

By /s/ Raymond A. Spillman
Acting District Director

Enclosures:

Statement
Envelope

FORM 2947 (REV. MAY 1970)	DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE SHORT-FORM STATUTORY NOTICE STATEMENT	DATE OF STATUTORY NOTICE OCT 5 - 1972

NAMES AND ADDRESS OF TAXPAYERS

Mr. Robert J. Kowalski and
Mrs. Nancy A. Kowalski
33 Armstrong Drive
Clark, New Jersey 07066

KIND OF TAX

INCOME

TAX YEAR ENDED	DEFICIENCIES	ADDITIONS TO THE TAX		
1970	$69.54			

The above deficiencies are based on adjustments and explanations as shown in the attached report of examination.

CONSENT TO ASSESSMENT AND COLLECTION

I do not wish to contest the above determination in the United States Tax Court; therefore I consent to the immediate assessment and collection of the deficiencies and additions to the tax, if any, indicated above, together with interest due.

	SIGNATURE OF TAXPAYER	DATE
NOTE: If a joint return was filed, both taxpayers must sign.	SIGNATURE OF TAXPAYER	DATE

IF YOU AGREE, PLEASE SIGN ONE COPY AND RETURN IT; KEEP THE OTHER COPY FOR YOUR RECORDS

6

U. S. GOVERNMENT PRINTING OFFICE : 1970 O - 406-243

FORM 2947 (REV. 5-7

Report of Individual Income Tax Audit Changes

Internal Revenue Service

Name of Taxpayer	Year	Form	Filing Status	In Reply Refer To
KOWALSK[illegible] & [illegible] A.	A7[illegible]	1040	[illegible]	[illegible]

Name And Title of Person With Whom Audit Changes Were Discussed	Date of Report	Social Security No	Examining District
	06097[illegible]	149 2[illegible]	[illegible]

INCOME AND DEDUCTION AMOUNTS ADJUSTED

Explanation No (See Attached)	Items Changed	Amount Shown on Return or As Previously Adjusted	Corrected Amount of Income And Deduction	Adjustments Increase or (Decrease)
	Food supplement inc.	405.	-0-	405.

A. Adjustment in Income Increase or (Decrease) (See Explanation of Adjustments Attached)	405.
B. Total Income or Taxable Income Reported or as Previously Adjusted	2657.
C. Corrected Total Income or Taxable Income	3062.
D. Tax Computed With Exemptions	460.54
E. Tax Surcharge	9.00
F. Tax Credits (Retirement Income, Investment, Foreign, or Other Allowable Credits) (If Adjusted, See Explanation Attached)	-
G. Self Employment Tax, Tax From Recomputing Prior Year Investment Credit (If Adjusted, See Explanation Attached)	-
H. Corrected Tax (Line D Plus Line E Plus Line G Less Line F)	469.54
I. Tax Shown on Return or as Previously Adjusted	400.00
J. Statutory Deficiency (Additional Tax Before Credits, Line H Less Line I)	69.54
K. Overassessment (Overassessment Before Credits, Line I Less Line H)	
L. Net Prepayment Credits (Excess F.I.C.A., Non-highway Gasoline Tax Credit, Regulated Investment Company Undistributed Capital Gain Credit, Previous Assessments, Refunds, And Credits (If Adjusted, See Schedule Attached))	400.00
M. Additional Tax (Line H Less Line L)	69.54
N. Overpayment (Line L Less Line H)	
O. Penalties (If Any, See Explanation Attached)	

Although this report is subject to review, you may consider it as your written notice that you have no objection to the adjustments shown and you waive the restrictions on assessment and collection of the deficiency and acquiescence in the disallowance of the overassessment, if any, shown above. If you agree, please sign one copy and return it in the enclosed return envelope. Keep the other copy with your records.

If you do not agree and wish to have further consideration given to your case, you should request a conference with the Appeals Office by filling out, signing, and returning the enclosed Form 5701. If you request a conference, it is important that you file your request within 30 days from the date of this letter to expedite the assessment and collection of the correct tax and to limit the accrual of interest. If you do not wish to request a conference, please sign and return the enclosed Form 870 as soon as possible. This will expedite the assessment and collection of the additional tax shown on Line M, plus any interest due on this tax and also any penalties shown on Line O, or the refund of any overpayment shown on Line N, less any interest and penalties shown on Line O.

FORM 3547
(FEBRUARY 1963)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

EXPLANATION OF ADJUSTMENTS

The amount claimed for food maintence is not an allowable deduction. The funds are taxable under I.R.C 61.

Please cite your reference & support your claim for a deduction of food maintenance

UNITED STATES TAX COURT

Docket No. 112-73

[Filed 1973 Mar 5 PM 3 29, United States Tax Court]

[Served Mar. 12, 1973]

ROBERT J. KOWALSKI AND
NANCY A. KOWALSKI, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits and denies as follows:

1. Admits the allegations of paragraph 1 of the petition.

2. Admits the allegations of paragraph 2 of the petition.

3. Admits the allegations of paragraph 3 of the petition.

4. Denies the allegations of paragraph 4 of the petition.

5. (a) Admits the allegations of paragraph 5(a) of the petition.

(b) through (f). Denies the allegations of paragraph 5(b) through (f) of the petition.

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiency determined by the respondent be in all respects approved.

/s/ Lee H. Henkel, Jr. GB
LEE H. HENKEL, JR.
Chief Counsel
Internal Revenue Service

OF COUNSEL:

EMORY L. LANGDON,
Regional Counsel
Internal Revenue Service
Room 904-970 Broad Street
Newark, New Jersey 07102

UNITED STATES TAX COURT

Docket No. 112-73

[Filed Feb. 20, 1974, United States Tax Court]

[Logged Jan. 31, 1974, United States Tax Court]

[Served Feb. 21, 1974]

ROBERT J. KOWALSKI AND
NANCY A. KOWALSKI, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

AMENDMENT TO ANSWER

THE RESPONDENT, for amendment to the answer filed in the above-entitled case, strikes from said answer paragraph 3, and the prayer thereof and adds after paragraph 6 and prior to the prayer the following admissions, denials, and allegations:

7. (a) IN FURTHER ANSWERING the petition and in support of the respondent's claim for an increased deficiency in income tax for the taxable year 1970, the respondent denies the allegations of paragraph 3 of the petition; except it is admitted that the taxable year in dispute is $330.70 which represents the $69.54 as stated in the statutory notice plus the increased deficiency of $261.16 as herein requested.

(b) In the statutory notice of deficiency dated October 5, 1972 upon which the above-entitled case is based, the respondent determined that the deduction claimed for food maintenance is not an allowable deduction.

(c) Subsequent to the issuance of the statutory notice of deficiency it was determined that during 1970 petitioner Robert J. Kowalski received from the State of

New Jersey $1,697.52 allegedly for "commutations of rations".

(d) Of the $1,697.52 received by petitioner in 1970 only $326.00 was reflected in petitioner's W-2.

(e) In his 1970 Federal Income Tax Return petitioner reported as income only $326.00 of the $1,697.52 received in 1970, thus failing to include as income $1,371.52.

(f) In the statutory notice of deficiency dated October 5, 1972, upon which the above-entitled case is based the respondent erroneously failed to include as income the $1,371.52 described in subparagraph (e) above.

(g) As a result of the failure to include the $1,371.52 as income the respondent failed to compute the statutory medical adjustment which would be required if the $1,-371.52 was included in petitioner's income.

(h) The petitioner's taxable income for the taxable year 1970 as shown in said statutory notice, is thereby understated in the amount of $1,425.91, consisting of $1,371.07 of "reimbursed expense for meals" plus the statutory medical adjustment of $54.84.

(i) The correct deficiency in income tax due from the petitioner for the taxable year 1970 is in the amount $330.70, and not in the amount of $69.54 as determined in the statutory notice.

WHEREFORE, the respondent prays that the Court redetermine the deficiency in income tax for the taxable year 1970 to be the amount determined by the respondent namely, $69.54 plus an increased deficiency in the income tax for the taxable year 1970 in the amount of $261.16, claim for which is hereby made pursuant to the provisions of Int. Rev. Code of 1954 § 6214(a).

MEADE WHITAKER
Chief Counsel
Internal Revenue Service

By: /s/ Gerald Backer
GERALD BACKER
Staff Assistant to the
Regional Counsel

OF COUNSEL:

Robert L. Liken,
Regional Counsel,
IRWIN R. COHEN,
Attorney,
Internal Revenue Service.

Room 904, 970 Broad Street,
Newark, New Jersey
201-645-3083

UNITED STATES TAX COURT

Docket No. 112-73

ROBERT J. AND NANCY A. KOWALSKI, PETITIONERS

—*v*—

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

REPLY

The above-named petitioners, in reply to the allegations contained in the Amended Answer in the above-entitled case, admit, deny and allege as follows:

7. (a) Admit that the amount of deficiency in dispute is $330.70 which represents the $69.54 as stated in the statutory notice plus the $261.16 alleged in the Amended Answer; deny the remaining allegations of sub-paragraph 7 of the Amended Answer.

(b) Admit the allegations of sub-paragraph (b) of paragraph 7 of the Amended Answer.

(c) Deny the allegations of sub-paragraph (c) of paragraph 7 of the Amended Answer; allege that during 1970 petitioner Robert J. Kowalski received $1,697.54 from the State of New Jersey as commutation of rations.

(d) Deny the allegations of sub-paragraph (d) of paragraph 7 of the Amended Answer; allege that $326.45 was included in petitioner Robert J. Kowalski's Form W-2 for 1970 with respect to commutation of rations.

(e) Deny the allegations of sub-paragraph (e) of paragraph 7 of the Amended Answer.

(f) Deny the allegations of sub-paragraph (f) of paragraph 7 of the Amended Answer.

(g) For lack of knowledge or information sufficient to form a belief as to the truth thereof, deny the allegations of sub-paragraph (g) of paragraph 7 of the Amended Answer.

(h) Deny the allegations of sub-paragraph (h) of paragraph 7 of the Amended Answer.

(i) Deny the allegations of sub-paragraph (i) of paragraph 7 of the Amended Answer.

8. Deny generally each and every allegation of the answer not hereinabove specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the relief sought in the Amended Answer be denied, that the Court determine that there is no deficiency in income taxes of the petitioners for the year 1970 and that the Court grant to the petitioners such other and further relief as to the Court may seem just, including a determination of any overpayment that may have been made.

Dated: April 4, 1974

/s/ Carl B. Cordes
CARL B. CORDES
Counsel for Petitioners
Battle, Fowler, Lidstone,
Jaffin, Pierce & Kheel
280 Park Avenue
New York, New York 10017
(212) 986-8330

UNITED STATES TAX COURT

Docket No. 112-73

ROBERT J. KOWALSKI AND
NANCY A. KOWALSKI, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

STIPULATION OF FACTS

It is hereby stipulated that, for the purposes of this case, the following statements may be accepted as facts and that all exhibits attached hereto and made a part hereof may be accepted as authentic; provided, however, that either party may object to the admission of such facts and exhibits in evidence on the grounds of materiality and relevancy, and either party may introduce other and further evidence not inconsistent with the facts herein stipulated:

1. The petitioners' legal residence on January 2, 1973, the date of the filing of the petition in this case, was 33 Armstrong Drive, Clark, New Jersey 07066.

2. The taxable year here involved is the calendar year 1970.

3. The petitioners, husband and wife, filed their joint Federal Income Tax Return, Form 1040, a copy of which is attached hereto and made a part hereof as Joint Exhibit 1-A, with the Internal Revenue Service Center, 16601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19155.

4. The respondent in his notice of deficiency, a copy of which is attached hereto and made a part hereof as Joint Exhibit 2-B, determined a deficiency in the amount of $69.54.

5. Respondent filed an amendment to answer in this case alleging an increase in the deficiency, in the amount of $261.16 for a total deficiency of $330.70.

6. In 1970, the petitioners paid $330.00 for medicine and drugs, $311.00 for insurance premiums for medical care and $433.00 for other medical and dental expenses for themselves and their dependents, none of which amounts were compensated by insurance or otherwise.

7. During all of 1970, petitioner Robert J. Kowalski (hereinafter referred to as "petitioner") held the rank of trooper with Division of State Police of the Department of Law and Public Safety of the State of New Jersey. The New Jersey State Police was created by act of the legislature of New Jersey on March 29, 1921. Attached hereto and made a part hereof as Joint Exhibits 3-C and 4-D, respectively, are copies of (i) relevant portions of Chapter 17B of Title 52 of the New Jersey Statutes Annotated, relating to the Department of Law and Public Safety, and (ii) all of Title 53 of the New Jersey Statutes Annotated, relating to the Division of State Police.

8. The head of the Department of Law and Public Safety is the Attorney General of the State of New Jersey, who is appointed by the Governor. (N.J.S.A. 52-17B-2). The executive and administrative head of the State Police is the Superintendent of State Police. (N.J.S.A. 53:1-1). The Superintendent is also appointed by the Governor. (N.J.S.A. 53:1-2). The Superintendent, with the approval of the Governor, makes all rules and regulations for the discipline and control of the State Police, and provides the necessary preliminary and subsequent instructions to the troopers in their duties as police officers. (N.J.S.A. 53:1-10). The Superintendent is authorized to provide for the payment of commutation of rations and quarters to members of the State Police not provided with rations and quarters by the State. (N.J.S.A. 53:3-12).

9. The Superintendent of State Police is popularly referred to as "Colonel". Below him in rank is the Deputy Superintendent who has the statutory rank of major. The remainder of the State Police is made up of men with the statutory ranks of captain, lieutenant, sergeant and trooper. There are approximately 1700 members of the State Police, of whom approximately 1050 are troopers.

10. All troopers must meet various physical, mental and moral character requirements, must take an oath of office, may "enlist" and "re-enlist" for successive periods of two years each and at the end of five years receive tenure in office.

11. A trooper is on duty or subject to call, according to the rules of the State Police, twenty-four hours a day, seven days a week and three hundred sixty-five days a year. Troopers may not engage in any other business or employment except on written permission of the Superintendent.

12. Prior to July 1, 1949, all troopers were supplied with meals at meal stations throughout New Jersey at the expense of the State.

13. Troopers sometimes spent half an hour traveling from patrol post to a meal station for meals, a like period of time to eat, and a further like period of time in returning to patrol posts.

14. In the instances where a trooper was on patrol or call and unable to get to a meal station, he would secure his meals at a public eating place, pay for them and submit a voucher for reimbursement from the State.

15. Effective July 1, 1949, the State stopped furnishing meals and began a "maintenance allowance" system. Attached hereto and made a part hereof as Joint Exhibit 5-E are Operations Orders of the Superintendent relating to the maintenance allowance system.

16. If Major William O. Nichol, Deputy Superintendent when the maintenance allowance system was adopted, was present, he would testify that, prior to adoption of the maintenance allowance system, he conducted a survey of states neighboring New Jersey, such as New York, Pennsylvania and Maryland, and learned that the State Police of those States were furnishing allowances to troopers in lieu of providing meals to troopers. The amount originally provided to New Jersey state troopers was $3.00 per day.

17. At all times herein involved petitioner was a trooper in good standing. He originally joined the State Police on August 1, 1960 and "re-enlisted" in 1962 and

again in 1964, and during the term of his second "re-enlistment" petitioner received tenure.

18. During the year in issue, petitioner received the sum of $10,436.92 from the State of New Jersey. This amount is comprised as follows:

(a) "Salary" (included on Form W-2)		$ 8,739.38
(b) "Commutation of rations" as provided for by N.J.S.A. 53:3-12 (included in petitioner's W-2)	$ 326.45	
(c) "Commutation of rations" as provided for by N.J.S.A. 53:3-12 (not included in petitioner's W-2)	1,371.09	
(d) Total "Commutation of rations" received in 1970		1,697.54
(e) Total Amount received in 1970		$10,436.92

19. Of the $10,436.92 described in paragraph 18, above, petitioner included $9,065.83 on his 1970 Federal Income Tax Return. The $9,065.83 consisted of the amounts described in paragraphs 18(a) and (b), above.

20. Petitioner did not include as gross income the amount of $1,371.09 as described in paragraph 18(c), above.

21. Petitioner was not required to submit expense vouchers or receipts for meals purchased while on duty.

22. Omit.

23. Before the autumn of 1970 the State of New Jersey did not deduct and withhold any tax on the commutation of rations allowance of troopers. In the autumn of 1970 the State of New Jersey began so to deduct and withhold.

24. During the year 1970 commutation of rations was paid to the New Jersey State Police as follows:

Troopers and Non-Commissioned Officers	$1,740.00
Lieutenants and Captains	$1,776.00
Majors	$1,848.00
Colonel	$2,136.00

/s/ Carl B. Cordes
Counsel for Petitioners

MEADE WHITAKER
Chief Counsel
Internal Revenue Service

By: /s/ Gerald Backer
GERALD BACKER
Staff Assistant to the
Regional Counsel
970 Broad Street, Room 904
Newark, New Jersey 07102
Tel. No. 201-645-3083

UNITED STATES TAX COURT

Docket No. 112-73

ROBERT J. KOWALSKI AND
NANCY A. KOWALSKI, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

SUPPLEMENTARY STIPULATION OF FACTS

The parties hereby stipulate and agree that for the purpose of this case the following facts and exhibits attached hereto and made a part hereof may be taken as true subject to the rights of the parties to object on main brief or reply brief to any or all portions of said stipulation and attached exhibits on the grounds of relevancy and materiality.

25. Attached hereto and labelled petitioner's Exhibit 11 is a copy of the testimony of Major William O. Nicol, Deputy Superintendent of the New Jersey State Police in 1949, since deceased, taken during the proceedings before the Tax Court of the United States on January 28, 1953 in the case of Robert H. Saunders v. Commissioner of Internal Revenue Service, Docket No. 40229. This testimony is stipulated to be part of the record in this case and it is further stipulated that such testimony is that of a witness called by the petitioner.

26. During 1970 the staff of the New Jersey State Police was approximately as follows:

Trooper	911
Trooper 2	96
Trooper 1	30
Sergeant	174
Detective Sergeant	93
Detective Sergeant First Class	33
Staff Sergeant	53
Staff Sergeant First Class	39
Lieutenant	50
Captain	17
Major	5
Superintendent	1
TOTAL	1,502

27. The men were assigned either to troops A, B, C, D, E, Atlantic City Expressway or Division Headquarters as follows:

	A	B	C	D	E	ACE	DH
Trooper	190	192	210	112	79	16	112
Trooper 2	12	28	15	11	13	0	17
Trooper 1	2	5	8	2	6	0	7
Sergeant	32	34	32	13	12	4	47
Detective Sergeant	14	10	15	5	3	0	46
Detective Sergeant First Class	3	4	3	1	1	0	21
Staff Sergeant	14	15	15	3	3	0	3
Staff Sergeant First Class	3	3	2	2	2	0	27
Lieutenant	5	5	5	3	3	1	28
Captain	1	1	1	1	1	0	12
Major	0	0	0	0	0	0	5
Superintendent	0	0	0	0	0	0	1

27

28. With the exception of the men with the rank of sergeant first class and above, the members of Troops A, B and C lived in barracks and worked various shifts as dictated by the exigencies in the area of their station. The men with the rank of sergeant first class and above who were in Troops A, B and C did not live in the barracks and normally, but subject to special assignments, worked 8-hours each day after which they were free to return to their residences; these men are normally assigned to administrative duties at troop headquarters and normally, but subject to special assignments, work 5 days on and 2 days off.

29. The men assigned to Troops D, E and the Atlantic City Expressway did not live in barracks and normally, but subject to special assignments, worked 8-hours each day after which they were free to return to their residences. These men were assigned primarily to toll roads and normally, but subject to special assignments, worked 6 days on and 2 days off.

30. The men assigned to Division Headquarters with the rank of sergeant first class and above are normally assigned to administrative duties and did not live in the barracks and normally, but subject to special assignments, worked 8-hours each day after which they were free to return to their residences. They normally, but subject to special assignments, worked 5 days on and 2 days off.

31. The men assigned to Division Headquarters below the rank of sergeant first class did not live in the barracks and were free to return home after their day's work was completed. The hours these men worked during the day could fluctuate depending on the case or detail they were assigned to.

32. The men who lived in the barracks were free to return to their residences when given passes or when on vacation.

33. All members of the New Jersey State Police received commutation of rations *i.e.*, Trooper, Trooper 2, Trooper 1, Sergeant, Detective Sergeant, Detective Ser-

geant First Class, Staff Sergeant, Staff Sergeant First Class, Lieutenant, Captain, Major; Superintendent.

/s/ Carl B. Cordes
CARL B. CORDES
Counsel for Petitioner

DATED: 7/15/74

MEADE WHITAKER
Chief Counsel
Internal Revenue Service

By: /s/ _____
GERALD BACKER
Staff Assistant to the
Regional Counsel
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970 Broad Street—Room 904
Newark, New Jersey 07102
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DATED: _____

[79] EXHIBIT 11

WILLIAM O. NICOL

was called as a witness for and on behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

THE CLERK: Will you state your name and address for the record, please?

THE WITNESS: William O. Nicol, Trenton, New Jersey.

DIRECT EXAMINATION

BY MR. GUTKIN:

Q Major Nicol, you are presently employed by the New Jersey State Police, are you not?

A Yes, sir.

Q In what capacity?

A Deputy superintendent.

Q How long have you been connected with the State Police?

A Since 1921, when the State Police started.

Q Would you describe some of your background and your connection with the state police and your origins with the state police?

A Well, the background is, I started as a trooper; went all through the grades until I reached the present position of deputy superintendent.

My position almost from the start was to select quarters, stations and so forth, for the troopers in New Jersey.

[80] Q Did you participate in any manner in the fixing of allowances for troopers?

A Yes, sir, I did. We had a very bad situation. The system we had was to hire a private house and have the people in the house—when I say "hire a private house", it was all over the state in approximately 30 different locations about 15 or 20 miles apart, and it was very unsatisfactory for the reason that the board house mistress would have meals, so-called hot meals set up, and

insisted that the troopers be there at that time; and the troopers, of course, being policemen, would come in maybe an hour and a half later and the meals would be cold.

In fact, I had a headache practically all the time that system was in.

So we looked around for some way to correct it, and the former superintendent, Colonel Shoeffel, asked me to contact neighboring states.

We contacted New York State, Pennsylvania, and Maryland, and found that they had somewhat the same headaches we had, and they were allowing different prices for the troopers that were not eating at fixed stations.

So, for example—do you want us to name the prices or just approximately—

Q How you arrived at—

A New York State was very liberal but some of the other [81] states were not so liberal, and we struck a figure at $3.50.

Q $3.50 per day?

A Per day. When the colonel—the reason I say that: It is more or less certain--part hearsay—but we conferred before the colonel went down to talk with the Governor and the budget director and he asked for $3.50 a day, but they claimed the budget could not stand that, so we cut it down to $3 a day.

Q Under the old system prior to the change from feeding at the regular stations, what were some of the problems?

A Well, I will say this way: I was what they call a troop commander. That would be a region commander today. And I had the headaches. The headquarters at Trenton would ask why the activities were not kept up and so forth.

We tried to insist and tried every method to try to get the men to spread their meal hours so they would cover the so-called districts or the area, and it was impossible to have the men do that.

We threatened to give them reprimand slips, and everything else. That was one of the reasons we did make the survey, to try to correct that.

Q And this change was made for what purpose?

A I would say it was primarily made to give the state a better coverage all through the state and have the men eat [82] there when they should be there, because, for instance, at this time of night, as we all know, the traffic starts rolling heavy and other crimes are committed; and this is about the time the boys would be thinking about going in for their supper and that would be a period of maybe an hour and a half or two hours when mostly they would not be there.

Q Under the present system what do you find?

A I find on the present system it reflects to the benefit of the state to have the men almost continuously out there, rotated so that they are out there.

Under the old system we could not do that, although we tried with orders and rules and everything else, and we could never get it to work.

Q Does it cost any more or any less at the present time than before?

A I would say it cost—it is a benefit to the state from the financial point, because it did cost considerably more in the old days.

We had to hire cooks, chefs and have our own cars transport food back and forth from, for instance, Atlantic City to Hammondton, a distance of approximately 30 miles. That called for a trooper going back and forth almost every day with state transportation.

Q Was it ever the proposal to give troopers additional compensation through this $70 a month allowance?

[83] A No, sir. Compensation did not come into the picture as far as I knew of. It was just for the benefit of the state. Nobody thought of compensation. The thought was—we were very anxious—I might say we are proud of the state police work, and we want to give the citizens of the state the best job we could do and I think we have done it as far as we are concerned.

Q Did the efficiency of the state police increase as a result of the change?

A I believe so. In fact, from my own personal knowledge, I would say yes, it had, because I was right in the

field and saw the operation of this one system as against the other.

MR. GUTKIN: You may cross-examine.

CROSS-EXAMINATION

BY MR. HOPKINS:

Q Major, you stated that you tried a number of systems prior to the one now under operation?

A No; I think you misunderstood. I don't remember saying that.

Q I am sorry. I thought you did. I thought you said that you attempted to—

A No. I did say we tried by different rules and orders and everything to keep the men out on the road instead of having them all in at supper time. It was almost impossible, because the boys were after the hot meals.

[84] You tell them to—one man to come in at 5 o'clock and the other fellow to come in at 7; the boarding house mistress would growl because she said the stuff all gets cold, and it was very unsatisfactory.

Q That is what I meant, Major. You tried a number of different systems of keeping the men on the road?

A By rules and orders.

Q By rules and orders, naturally, yes.

A It did not operate.

Q You found they were unsuccessful; is that correct?

A That is right. In fact, as I say, I am in that from the start and we had this Colonel Schwartzkopf—he is a general now—he was very military. Everything was very military. In fact, he would fire some of us at the drop of a hat because he thought he was in the army or something; or go to the guardhouse.

It was very military at the start. In fact, the first five years it was almost—I have been in the army and I know what it was. I think it was even stricter than the army. I am saying that not for any effect, but just because it is a fact.

Q That was not very good for personnel, was it, Major?

A For the Judge's information, General Schwartzkopf was that way until he got married and got a couple of kids, and then he softened up.

MR. GUTKIN: I think we would prefer to have that [85] off the record.

THE WITNESS: I would tell that to General Schwartzkopf.

BY MR. HOPKINS:

Q Major, to get back to what we were talking about. By the term "system", you meant a number of different—

A I would not say we tried different rules. We tried to impress upon the men the importance of somebody being out there.

Q Didn't you attempt to keep—

A It might work for three days and the next thing the inspector would go around and find the same thing back where it was.

Q Didn't you attempt to keep a man on duty at all times on a particular patrol road?

A We tried to but it did not work.

Q Let's take now the Whitehorse Turnpike. Does that run through your jurisdiction?

A Yes.

Q Let's say on Sunday afternoon coming from Atlantic City and Ocean City down, that way, it is very heavily patrolled, is it not?

A It was.

Q Very heavily travelled?

A For about 25 years it was, but now they have three or four highways. There was just the one highway going into Atlantic City.

[86] Q Is the Blackhorse Turnpike more heavily travelled?

A That is right.

Q So we will substitute the Blackhorse Turnpike.

A That is right.

Q About five to six o'clock on a Sunday afternoon you just could not take all troopers off that road, could you?

A That is it. We would call that an emergency situation. A better example might be down around Keyport area, with everybody going down to the Jersey shore, piles across the bridges there on a Sunday night, say from 5 o'clock until nine, it is almost impossible to move on that bridge.

We call that practically a special emergency detail, and that is just seasonal.

Q Let us consider a situation that we won't consider an emergency detail but a fairly heavily travelled route under the situation as it existed prior to this particular regular operations order allowing the troopers to take their meals on the road and being reimbursed monthly: A situation in which a route was heavily travelled—

A Say the Whitehorse Turnpike.

Q —would be such as to make it very dangerous if the troopers were not there at that time, wouldn't it?

A Yes.

Q Now, what did you do then in a situation of that nature? Did you declare an emergency every time there was [87] a fairly traffic jam?

A Just in passing, the Whitehorse Pike was a little different because Hammondton is almost in the center of the Whitehorse Pike. There we had the kitchen and regular kitchen employees. That is not the general line in the state. But right now we have probably, offhand I would say half a dozen or more we call real tough places for traffic; This Keyport I spoke of and several places in North Jersey.

Q What did you do prior to this new set-up?

A Well, unfortunately there was no provision made for the boys to eat other than when they could get back at the regular feeding time.

Q Didn't you attempt to rotate them, as you say, one eat at 5 and the other at 6:30? Isn't that what you were trying to do?

A The boarding house people would not stand for it. The reason I say that—I am not trying to color this—but we had very difficult—we had a lot of difficulty in getting people to take the troopers in, because they had to stay right there almost all the time and take care

of them; and they claimed there wasn't enough money in it for them.

They didn't want to be bothered with this stuff of one man coming in at five o'clock and another coming in at 6:30 or 7 o'clock. We had an awful time.

When we let go of one place and tried to put ten troopers [88] in, it is hard as the dickens to try to find a building that you can quarter ten troopers.

Q I realize how difficult that must have been, Major, but it was attempted as the only means at that time, was it not?

A I don't understand what you mean by "attempted".

Q Didn't you attempt to keep the road patrolled even though you were unfortunate under the system under which you worked?

A The thought was there and we did tell the men they should be out there, but that is as far as we could get.

Q You tried to do a good job under the situation as set up; is that not correct?

A That is right.

Q Even so far as you stated in direct examination, threatening to put what type of slips—

A Reprimand slips.

Q Reprimand slips in their folders?

A If you are talking about some time back—

Q Yes, I understand.

A At one time it was so involved we cut the men down to two meals a day, so that is how we were trying to help the citizens out, which was not fair to anybody, but the main purpose of this whole set-up—I went to, as I said, different states, and the whole purpose was to keep the men out on the [87] road where they would be of some service to the state and the citizens. That is the only purpose of the change.

Q And you found the troopers lived a more happy life under the system as it is now?

A It is like the army. They are always griping. You can't keep them happy.

Q I know what you mean, Major. However, there are gripes and less serious and more—

A I think it is more satisfactory to the trooper to know that he has at least $3 that he can go out and buy a meal. Under the old system invariably the men would go without a meal and the first thing, you would have a fellow with ulcers or something else on your hands.

MR. HOPKINS: Yes, that is merely what I was interested in, Major. Very well, that is all.

MR. GUTKIN: No further questions.

The petitioner rests.

[90] (Witness excused.)

Thereupon,

WILLIAM O. NICOL

was recalled to the stand by and on behalf of the Petitioner, and having been previously duly sworn, was examined and testified further as follows:

REDIRECT EXAMINATION

BY MR. GUTKIN:

Q Are you familiar with the order?

A No, sir, I am not.

Q I thought—

A Captain Mitchel was misinformed. I am not familiar with this at all. See, just for explanation, Colonel Schoeffel was the superintendent at this time, but Major Snook, who drew this order, was the executive officer, and it was drawn up between those two gentlemen.

Q Any other people participate?

A Well, they had the discussion between themselves. The survey was made by me, but this particular order was due to him being an executive officer, handled these orders to the troopers. We call it the road.

Q Did you in any way participate in any discussions [91] leading to the preparation of the order?

A No, I did not—not this order—the subject matter I probably did.

Q Well, by that I mean the subject matter of the order. I don't mean necessarily the writing.

A As I stated before to counsel, I did participate in a survey made to arrive at the amount of the meals we were supposed to get.

Q And did you participate in the recommendations made for the allowance?

A Yes; in the discussion of what it should be—$3.50.

Q Did you make any recommendations as to the permanency of this change or as to the—

A Yes, I did. I recommended that we do the same as New York and give them $4 a day, if that is what you mean.

Q How about the duration of it? Did you have any—

A Yes, I said it should go in.

Q As a permanent matter or on an experimental basis?

A Well, everything we do in the state police, even promotions, we put on a so-called temporary experimental basis, even the promotion of captain or anybody else. That is the procedure we generally work, regardless of what it is. I don't want to take too much time—even buying an automobile, if we go into a different automobile, we try it for the life of the [92] car and if we change, we will change. The same applies to almost anything we do.

Q Were you, as one of the officers of the state police, interested and anxious to have the change work?

A Yes, I was.

Q Were you interested in impressing on the members of the state police, the troopers, the necessity of making the order work?

A Yes; because it was something new and we wanted the men to realize what it was, that it was for the benefit of the state, what this system was, to increase their activities and reflect from their activities to the benefit of the state.

Q Did you feel that a so-called selling job should be done with the troopers to make this order work?

A Yes, sir; we have to do that with all our orders practically.

MR. GUTKIN: No further questions.

MR. HOPKINS: No further questions.

THE COURT: Witness is excused.

UNITED STATES TAX COURT

Docket No. 112-73

ROBERT J. KOWALSKI AND
NANCY A. KOWALSKI, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

DECISION

Pursuant to the opinion of the Court filed October 14, 1975, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in income tax due from the petitioners for the taxable year 1970 in the amount of $113.12.

/s/ Irene F. Scott
Judge

Entered: Jan. 6, 1976

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It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this decision, without prejudice to the right of either

party to contest the correctness of the decision entered herein.

/s/ Carl B. Cordes
Counsel for Petitioners

DATED: 12/11/75

MEADE WHITAKER
Chief Counsel
Internal Revenue Service

By: /s/ Agatha L. Vorsanger
AGATHA L. VORSANGER
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DATED: [Illegible]

SUPREME COURT OF THE UNITED STATES

No. 76-1095

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ROBERT J. KOWALSKI, ET UX.

ORDER ALLOWING CERTIORARI. Filed March 28, 1977

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1977 233542 86